

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring Bentonite Nos. 1 through 5 unpatented lode mining claims null and void ab initio. UMC 270366 through UMC 270370.

Affirmed as modified.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

For purposes of recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), the filing of notices of location, evidencing a date of location subsequent to the time at which mining claim location notices for the same land were declared null and void ab initio, together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of the Act.

3. Mining Claims: Lands Subject to -- Recreation and Public Purposes Act

The Recreation and Public Purposes Act makes reserved minerals subject to disposition only under applicable laws and such regulations as the Secretary may prescribe. In the absence of such regulations, land under patent pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 through 869-4 (1976), is not open to location under the mining laws.

4. Patents of Public Lands: Generally -- Recreation and Public Purposes Act

A patentee's transfer of property, or use of property, for a purpose other than the one described in a patent under the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), without consent of the Department of the Interior, triggers reversion of the land to the United States; however, such reversion occurs only after due notice and an opportunity for a hearing has been provided to the patentee.

APPEARANCES: George Schultz, pro se, and for W. William Howard and James L. Schultz; David K. Grayson, Assistant Regional Solicitor, Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

George Schultz 1/ appeals from a November 15, 1983, letter decision of the Utah State Office, Bureau of Land Management (BLM), in which BLM declined to accept for filing, notices of location for the Bentonite Nos. 1 through 5 unpatented lode mining claims. UMC 270366 through UMC 270370.

Previously, on August 3, 1983, BLM had issued a decision to Schultz which stated that on November 23, 1982, Schultz had filed documents and required filing fees with BLM for the Bentonite Nos. 1 through 5 mining claims UMC 260033 through UMC 260037 (hereinafter referred to as the "first" Bentonite Nos. 1 through 5 mining claims). In that decision, BLM informed Schultz that on March 18, 1966, the City of Moab had filed a recreation and public purposes application for a golf course on certain lands described as T. 26 S., R. 22 E., Salt Lake meridian; SW 1/4 SW 1/4 sec. 14; SE 1/4 SE 1/4 sec. 15; W 1/2 NW 1/4 sec. 23, which comprised a total of 160 acres. BLM further informed Schultz that the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. § 869 (1976), and the regulation, 43 CFR 2091.3-2, make it plain that lands classified for disposition under the Act are not open to mineral location and that a mineral location made on land not open to location under the mining laws is null and void ab initio. BLM concluded that, because the lands had been "classified for the proposed R&PP on January 17, 1963, thereby segregating the lands from mining location," the first Bentonite Nos. 1 through 5 claims, UMC 260033 through UMC 260037, were null and void ab initio. BLM noted that a right of appeal of its decision was allowed.

1/ Co-locators of the claims as listed on the location notices filed with BLM on Oct. 31, 1983, are George Schultz, Moab, Utah; W. William Howard, Englewood, Colorado; and James L. Schultz, Denver, Colorado. George Schultz appeals on behalf of himself and on behalf of the other locators. We assume the three are a partnership of which George Schultz is member or a business association of which he is an officer or employee, so that he may represent all three. See United States v. Norman Montgomery, 75 IBLA 358, 361 (1983).

In the letter dated November 15, 1983, which is the subject of this appeal, BLM noted that the October 31, 1983, notices of location for the second Bentonite Nos. 1 through 5 mining claims (assigned numbers, UMC 270366 through UMC 270370) were identical in location to the previously located first Bentonite Nos. 1 through 5 claims (UMC 260033 through UMC 260037) that had been declared null and void ab initio by BLM on August 3, 1983. The November 15, 1983, letter decision stated that "[t]he lands in question remain closed to location under the provisions of the 1872 Mining Law for the reason(s) stated in the decision of August 3, 1983." The November 15, 1983, decision further provided that "the subject Notices of Location are not accepted for filing and are returned herewith" and that "[r]eturn of filing fees have [sic] also been authorized and will be forthcoming."

In his statement of reasons for appeal of the November 15, 1983, letter decision, Schultz states:

1. The letter sent by the BLM refusing to file Appellants' claims was irregular, improperly served, and denied due process of the law and administrative relief.
2. The City of Moab R&PP Patent was never lawfully issued, and is therefore null and void on its face. Consequently the lands covered by the Patent were not legally segregated from mineral entry, and were thus open for mineral location and entry at the time Appellant's original Bentonite claims and later Bentonite claims were staked.
3. The lands covered by the City's R&PP Patent were neither properly classified nor properly segregated from mineral entry by the Department. Accordingly the lands were as if never classified and never segregated from mineral entry. Consequently the R&PP lands were, and had been, open for mineral entry at the time Appellant's original Bentonite claims and later Bentonite claims were located.

Schultz provides six reasons, each of which, he asserts, in and of itself, triggered the reversion clause of the R&PP patent and revested the lands to the United States. Schultz contends that the lands, having so reverted, were open for mineral entry at the time appellant's first and second Bentonite claims were located. Those reasons are, as stated by appellant, as follows:

4. The City of Moab, after an unreasonable amount of time, has not yet begun the project for which the application for the R&PP Patent was made.
5. The City of Moab has, for a period of at least seven years, allowed the lands covered by the R&PP Patent to be devoted to a use other than that for which the lands were conveyed.
6. The City of Moab has, for a period of at least seven years, allowed the lands covered by the R&PP Patent to be controlled by another entity, Grand County.

7. The City of Moab, on September 15, 1983, passed an option agreement to transfer the R&PP lands to a private developer to construct a private golf course.

8. The City of Moab, contrary to the terms of its R&PP Patent, did not follow its approved plan of development or approved plan of management to develop the R&PP lands.

9. The City of Moab acted illegally and fraudulently in allowing a clay pit to operate on the R&PP Patent lands, and in allowing federal minerals to be excavated and removed from the R&PP lands outside of law and federal regulations. The BLM was aware of this mineral trespass use and did nothing to curtail or stop it. The R&PP lands have been used outside of federal law and regulations and have been misadministered.

Schultz further states:

10. The R&PP Act provides for reservation to the United States of the mineral estate in the lands so leased or patented, and provides for the right to mine and remove the same under applicable laws and regulations to be established by the Secretary. The regulations used by the BLM to classify lands under the R&PP Act are in conflict with one another and do not comport with the statutory provisions of the R&PP Act. Accordingly these regulations are not valid. Consequently the lands covered by an R&PP lease or patent are not properly segregated from mineral use, absent a strong showing to the contrary, and are properly open to mineral entry and location.

11. The R&PP Act provides for reservation to the United States of the mineral estate in the lands so leased or patented, and provides for the right to mine and remove the same under applicable laws and regulations to be established by the Secretary. The promise of future regulations governing the right to mine and remove minerals from the public estate was fulfilled by promulgation of regulations under FLPMA which guard against unnecessary and undue degradation of the land. Consequently mining claims located on R&PP leases or patents after the promulgation of the 43 CFR 3809 regulations in 1980, which follow the provisions of the General Mining Law of 1872 and FLPMA, and the regulations under 43 CFR 3800, are legally and properly located. 2/

2/ On Feb. 21, 1984, the Assistant Regional Solicitor, on behalf of BLM, filed an answer to George Schultz's statement of reasons in which it is contended that because Schultz failed to appeal the relevant BLM decision, i.e., that of Aug. 3, 1983, in a timely fashion, his appeal should be summarily dismissed. The answer further contends that the BLM decision that the Bentonite claims are null and void is correct because the lands on which they are located are

[1] As can be ascertained from the materials provided by Schultz with his statement of reasons, Schultz had sent a letter dated October 11, 1983, to the Director, Utah State Office, BLM, which states:

Since you have recently been rescinding your Land Law Examiners' Final Decisions on certain mining claims, I am asking you to do the same for my Bentonite Claims 1 through 5. The Bentonites (UMC 260033 - 260037) were located on November 1, 1982. On August 8, 1983 your staff sent me a letter declaring the Bentonite Claims null and void ab initio because they were staked on an R&PP Patent. By this letter I request that you rescind the previous decision (as you have done for others in this community; see my letter to you dated September 10, 1983) and reinstate my Bentonite Claims. This should be done on the basis that the R&PP Patent is void ab initio due to the fact that none of the R&PP provisions have been met, and the restrictions have been repeatedly violated for over a decade.

* * * * *

On the basis of the above information, I ask that you reinstate my Bentonite Mining claims, on the basis that the R&PP Patent of May 14, 1968, is inoperative and void, and should be considered as such since 1978. Surely ten years would have given the City plenty of time to construct its golf course. [Emphasis in original.]

(Exh. 4 at 1, 17). The letter dated September 10, 1983, referenced by Schultz in exhibit 4 was not included with the statement of reasons nor is it contained in the case file.

As noted above, on August 3, 1983, BLM, by decision, declared the first Bentonite Nos. 1 through 5 mining claims, UMC 260033 through UMC 260037, null and void ab initio. Schultz has provided information (Exh. 4), which establishes that he did not appeal that decision; rather, under the facts as set forth by Schultz, he waited until September 10, 1983, and at that time, he asked that the August 3, 1983, BLM decision be rescinded.

(fn. 2 (continued))

segregated from mineral entry and that even if the lands were not properly classified and segregated, and the city of Moab had violated the conditions of their patent, the land would not have automatically reverted and become open to mining claims since the reversion clause of 43 U.S.C. § 869-2 (1976) is not self-operating.

The arguments contained in the answer filed on behalf of BLM regarding classification and segregation are simply irrelevant since the segregative effect of a classification for sale or other disposal terminates upon disposal of the lands. See 43 CFR 2411.1-2(e)(3) (1966). Thus, to the extent that the State Office predicated its decision on the ground that the land was segregated because of a continuing classification of the land as suitable for disposal, the decision was clearly erroneous.

Under the regulations, 43 CFR 4.411, an appeal from a BLM decision must be made within 30 days of the date that the BLM decision is received. It can be concluded from the materials provided by Schultz that he received the August 3, 1983, BLM decision on August 8, 1983. Even if the letter of September 10, 1983, had been intended by Schultz to be an appeal of the August 3, 1983, decision, it would not have been timely filed since the date of the letter itself evidences that it was not sent until after the appeal period had run. Ray Mallory, 68 IBLA 189 (1982); Madison D. Locke, 65 IBLA 122 (1982); Reg Whitson, 55 IBLA 5 (1981).

Since Schultz did not file a notice of appeal of the August 3, 1983, decision of BLM within the 30-day period allowed by regulation for such appeal, the BLM decision as to the first Bentonite Nos. 1 through 5 mining claims (UMC 260033 through UMC 260037) became final.

[2] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location.

Regulation 43 CFR 3833.1-2 describes the manner of recordation on Federal lands and provides, in pertinent part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal lands, * * * shall file within 90 days after the date of location of that claim or site in the proper BLM office, a copy of the official record of the notice or certificate of location of that claim or site that was or will be filed under state law. * * *

(b) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) [sic] of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites a description shall be furnished.

Regulation 43 CFR 3833.1-3 provides that each claim filed shall be accompanied by a one-time nonrefundable recordation fee of \$5. Regulation 43 CFR 3833.5(a), however, provides: "Recordation or application involving

an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law."

As we have noted, the first Bentonite Nos. 1 through 5 claims, UMC 260033 through UMC 260037, were declared null and void by the BLM decision of August 3, 1983, and that decision was not appealed. As long as Schultz and the co-locators, listed on the subsequent notices of location, complied with the regulations, 43 CFR 3833.1-2, however, any subsequent notices of location, even though they embraced the same lands, should have been accepted for filing. In effect, so long as Schultz and the listed relocators provided new notices of location evidencing a date subsequent to the time at which the prior notices of location became void, as well as proper recordation in the county in which the lands are located, and the filing of the new location notices was accompanied by the proper filing fees, all of which happened in the present situation, the subsequent notices of location constituted valid filings. BLM should have accepted the filings and retained the filing fees. 3/

Although BLM declined to accept the second location notices and stated that it would return the filing fees, we will construe the BLM letter of November 15, 1983, as a decision which, because of references to the August 3, 1983, decision, operated as a declaration that the claims, UMC 270366 through UMC 270370, were also null and void ab initio, and discuss the matter on the merits. 4/

Schultz concedes that on May 14, 1968, a land patent had been issued to the city of Moab, Utah, "for extension of Moab Golf Course."

The terms of the patent provide as follows:

3/ Although the new dates on the location notices raise a presumption of relocation such that the notices must be recorded by BLM, there is no implication raised by the mere filing of the location notices that the claimant went on the land and physically relocated the claims, as would be necessary to assert a valid claim.

4/ Schultz and the co-locators listed on the notices of location filed with BLM on Oct. 31, 1983, were entitled to so file under 43 CFR 3833.1-2. Had BLM accepted the notices of location and the filing fees, instead of returning both, all of the locators would have been entitled to notice and an opportunity to be heard before the initial BLM decision, adverse to each, became final and appeal to this Board would satisfy such due process requirements. George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979). Since, however, Schultz made the filings and submitted the filing fees on behalf of the co-locators listed on the notices of location, as well as on his own behalf, he was acting as agent for all the co-locators. When the filings were returned to Schultz by BLM, even though erroneously, the rules of agency imposed upon him the duty to inform those, on whose behalf he was acting, of such a return. 3 C.J.S. Agency § 272 (1973).

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945; and

2. All mineral deposits in the land so patented, and to it or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

This patent is issued under the provision that, if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without the consent of the Secretary of the Interior or his delegate, title shall revert to the United States.

If the patentee or its successor in interest does not comply with the provisions of the approved plan of development, filed on August 25, 1966 with the Bureau of Land Management, or with the approved plan of management, filed on August 25, 1966 with the BLM, or with any revision approved by the Secretary of the Interior or his delegate, said Secretary or his delegate, after due notice, and opportunity for a hearing, may declare the terms of this grant terminated in whole or in part. The patentee, by acceptance of this patent, agrees for itself and its successor in interest that such declaration shall be conclusive as to the facts found by the Secretary or his delegate and shall, at the option of the Secretary or his delegate, operate to revert in the United States full title to the lands involved in the declaration.

The Secretary, or his delegate, may in lieu of said forfeiture of title require the patentee or its successor in interest to pay the United States an amount equal to the difference between the price paid for the land by the patentee prior to issuance of this patent and 50 percent of the fair market value of the patented lands, to be determined by the Secretary or his delegate as of the date of issuance of this patent, plus compound interest at four percent beginning on the date this patent is issued.

The patent was granted subject to seven additional specified reservations, conditions and limitations. See Patent No. 43-68-0031, Exh. 15, Appellant's Statement of Reasons.

Included with the case file is a copy of a Status of Public Domain Land and Mineral Titles plat (see also Exh. 38) which clearly shows that the lands, T. 26 S., R. 22 E., Salt Lake meridian, Utah, SW 1/4 SW 1/4 sec. 14; SE 1/4 SE 1/4 sec. 15; W 1/2 NW 1/4 sec. 23, are covered by land patent No. 43-68-0031. As shown on the map filed with BLM by Schultz on October 31, 1983, the claims

which are the subject of this appeal clearly lie within the lands covered by land patent No. 43-68-0031.

Further, a copy of the Historical Index for T. 26 S., R. 22 E., Salt Lake meridian, Utah, was provided to this Board by BLM upon our request. That index clearly shows that an R&PP lease (U-065013) had been issued on March 22, 1963, and that an R&PP patent No. 43-68-0031 was issued on May 14, 1968, and a reference is provided to the BLM serial register page where notation of the patent is found.

[3] Initially, we must note that the R&PP Act makes reserved minerals subject to disposition only under applicable laws and "such regulations as the Secretary may prescribe." No such regulations have been issued and, as this Board has held in regard to the Small Tract Act, the Secretary has, in effect, prescribed that there shall be no prospecting for or disposition of the reserved deposits at this time. Until he prescribes regulations permitting the prospecting for, mining and removal of such reserved deposits, the lands in which such deposits may be found are not open to location under the mining laws. Gloria Ann Sandvik, 73 IBLA 82 (1983); Dredge Corp., 64 I.D. 368, 374, (1957), aff'd, Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). 5/

This Board has discussed the issue of lands patented under the R&PP Act. We have stated that "[a] patent, for all purposes of this discussion, is equivalent to a deed" and that:

This Department has held in decisions too numerous to cite, that generally, upon issuance of a patent to a tract of land, all unreserved title and control passes from the United States, and the Department has no further jurisdiction. The general rule is that to cancel a patent which has been issued improvidently, it is necessary for the United States to bring suit in a court of competent jurisdiction. However, this rule is not applicable where the patent is a nullity, and void when issued, as in this case.

Sky Pilots of Alaska, Inc., 40 IBLA 355, 366, 367 (1979). 6/

5/ Schultz contends that promulgation of the regulations in 43 CFR Subpart 3809 opens the lands covered by the R&PP patent to location under the mining laws. The applicable regulation, 43 CFR 3809.0-5(c), however, excludes from the definition of Federal lands, as used in subpart 3809 of 43 CFR, those lands where only the mineral interest is reserved to the United States.

We also note that until changes were promulgated effective August 22, 1983, regarding oil and gas leasing, there was no provision to even lease the lands covered by an R&PP patent. See 43 CFR 3101.6, 48 FR 33666 (July 22, 1983).

6/ Under the circumstances of Sky Pilots of Alaska, Inc., supra, we held that, since the patent was void when issued, no judicial proceedings were necessary to be initiated by the United States for the purposes of canceling the patent.

In that case, the patent was held to be a nullity and void when issued because the recipient of the patent, Sky Pilots of Alaska, Inc., had never been incorporated or certified to do business in the State of Alaska and was therefore a legal nonentity. Similarly, where the United States retains a reversionary interest, the Department retains the authority to declare that the land has reverted, though it will often be necessary to initiate a suit to clear the cloud on the United States title. See Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975).

[4] As noted by Schultz and as stated by this Board in the decision Roberta Thompson, 38 IBLA 333, 336 (1978), a grantee's transfer of the property and its subsequent use for a purpose other than the one described in the R&PP patent without the consent of the Department of the Interior triggers the right of the United States to declare a reversion of the land.

The patent itself, as noted earlier, reflects this, in that it provides: "If the patentee or its successor in interest does not comply with the provisions of the approved plan of development, * * * said Secretary or his delegate, after due notice, and opportunity for a hearing, may declare the terms of this grant terminated in whole or in part." See 43 CFR 2741.8.

In an answer to the statement of reasons for appeal, counsel for BLM discusses the reversionary clause of the R&PP patent and correctly concludes that the clause is not self-executing but, rather, requires the exercise of affirmative action on the Department's part.

Counsel argues further, however:

In addition, the conclusion that Moab may have violated any covenants of its patent, as [Schultz] alleges, would have to be determined by the BLM after, as has been shown to be common practice, an investigation and an opportunity for Moab to be heard. At this point, the BLM has not found it necessary to conduct such a detailed investigation or to invoke the reversionary clause.

The BLM did inquire of Moab as to the alleged violations and concluded not to proceed further on them. See Letter, Moab Community Development Agency to Roland Robinson, State Director, Utah State Office, BLM, October 22, 1983, SRA [Statement of Reasons of Appellant], Exhibit 36; Letter, District Manager, Moab District BLM, to City of Moab, November 2, 1983, SRA, Exhibit 37; Letter, Roland Robinson, State Director, Utah State Office, BLM, to George Schultz, November 4, 1983, SRA, Exhibit 5.

Furthermore, even if an investigation did result in a finding by the BLM that Moab had violated the covenants of its patent, departmental practice might, as it has before, allow an extension of time to the patentee to correct defects or violations and would, as required by regulations and practice, protect the patentee's rights to due process of law through the opportunity for a hearing.

Answer at 24.

BLM asserts that this Board would have no jurisdiction regarding a BLM decision concerning the reversionary clause contained in the patent (Answer at 3). We disagree. While BLM is vested with some discretion in declaring an R&PP patent to have reverted, such discretion is not unlimited. In any event, this Board reviews discretionary decisionmaking of BLM and may, in the proper case, substitute its opinion for that of BLM. Boulder City Aero Club, Inc., 21 IBLA 343 (1975).

Although the issues raised by Schultz concerning the failure of Moab to fulfill the patent obligations are not insubstantial, they are not proper for review by this Board at this time since any reversion which this Board might direct or which BLM might order would be effective after the location of the mining claims at issue. Since a mining claim located on lands not open to location would not be revitalized by a subsequent return of the land to an open status, Schultz would gain nothing by succeeding in his argument that the patent ought to be revested in the United States. 7/

7/ Together with his reply to the answer of the Solicitor, Schultz has attached copies of certain documents which indicate that BLM and the city of Moab, Utah, contemplate that, at some time in the future, the R&PP Patent will be reconveyed to BLM and the land covered by the patent will be sold in a direct sale to the city (Exhs. 39 and 40).

We note that nothing in the R&PP Act precludes a reconveyance back to BLM of an R&PP patent. Further, sales of public lands are provided for in section 203 of FLPMA, 43 U.S.C. § 1713 (1976), which provides:

"Sec. 203. (a) A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 202 of this Act, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

* * * * *

"(f) Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

fn. 7 (continued)

- (1) the State in which the land is located;
- (2) the local government entities in such State which are in the vicinity of the land;
- (3) adjoining landowners;
- (4) individuals; and
- (5) any other person."

The regulations governing such sales are found at 43 CFR Subpart 2711. The regulation, 43 CFR 2711.1-2, Notice of realty action, provides, in pertinent part:

"(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, covenants, conditions, and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide 45 days after the date of issuance for the right of comment by the public and interested parties.

"(b) The notice shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographical area within which the public lands [sic] and the head of any political subdivision having administration or public services responsibility in the geographic area within which the public lands are located, are located not less than 60 days prior to the sale. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

"(c) The notice shall be published once in the Federal Register and once a week for 3 weeks thereafter in a newspaper of general circulation in the general vicinity of the public lands being proposed to be offered for sale." (Emphasis added.)

Accordingly, should Schultz or other interested parties have comments concerning any proposed sale of the subject lands, the regulations provide a procedure for such.

